

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | 8:09CR187 |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | MEMORANDUM AND ORDER |
| DANNY REAVES, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the court on the defendant's motion to vacate under 28 U.S.C. § 2255, Filing No. 131. In the motion, the defendant raises essentially the same issue, newly discovered evidence, as he raised in his motion for new trial, Filing No. 105. In the motion to vacate, the defendant seeks an evidentiary hearing on the newly discovered evidence issue. He was granted an evidentiary hearing in connection with his motion for new trial. See Filing No. 107. After the hearing, defendant's motion for new trial was denied in the Memorandum and Order dated August 9, 2010. Filing No. 136. For the reasons stated in that order, the defendant's motion to vacate is similarly denied. To the extent that the defendant's motion alleges ineffective assistance of counsel in connection with the issue, the motion is premature and is denied without prejudice to reassertion after appeal. Accordingly,

IT IS ORDERED that the defendant's motion to vacate or set aside his conviction and sentence (Filing No. 131) is denied.

DATED this 16th day of September, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Court Judge